IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 20 OF 1995

Mallikarjun Swamy s/o late
Shri. Mahadev Swamy,
Age 62 years, (Retd. Lt. Col.),
Advocate, R/o. "Suman",
53, Rakshak Society,
Aundh Camp: Post Office,
Pune-411 027 ...Appellant.

Versus

1. The State of Maharashtra,

2. Mrs. Arasaily Sivsekar Bose,
R/o. Shridhar Apartments,
Plot No.22, Aundh,
Pune 411 007 ...Respondents

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None for the appellant.

Shri. A.S. Shitole, A.P.P. for the State.

None for the respondent No.2

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 11TH OCTOBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant i.e. original complainant Shri. Swamy has challenged the judgment and order dated 29.8.1994 passed by the learned J.M.F.C. Court No.9, Pune in Criminal case No. 36/91. By the said judgment and order, the learned Magistrate acquitted the respondent No.2-original accused of the offence under Sections 279, 337 of I.P.C. and section 78/112 of Motor

Vehicles Act.

2. Brief facts of the prosecution case are as under:-

. On 29.11.90 P.W.2 i.e. the appellant Shri. Swamy was proceeding on his scooter bearing No. MVT/4723 towards the square near Ashok Bunglow near Poona Gate police chowki. When he was about to reach the square one car came from North side in high speed and gave dash to the front wheel of the scooter of Shri. Swamy, due to which he was thrown away from his scooter and his right hand was fractured. Thereafter, he was taken to the military hospital and his statement came to be recorded by the police on the same day. P.W.1 Vishwanath More, a Security Supervisor was present near Sindh colony, road No.4, he saw the accident between Ambassador car and the scooter and he informed P.W.3 Head constable Vilas Suryawanshi. A complaint regarding the incident was lodged by head constable Vilas Suryawanshi on 29.11.90. After investigation, the charge sheet came to be filed against the respondent No.2.

3. Respondent No.2-accused appeared before the Court and charge (Exh.6) came to be framed against her under Section 279, 337 of I.P.C. and section

78/112 of Motor Vehicles Act. She pleaded not guilty and claimed to be tried.

4. During the course of trial, in all the prosecution has examined three witnesses i.e. P.W.1 Vishwanath More, P.W.2 Swamy who was injured in the incident and P.W.3 head constable Vilas Suryawanshi who lodged the complaint. After going through the evidence adduced by the prosecution, the learned Magistrate acquitted the respondent No.2-accused of all charges levelled against her. Being aggrieved by the said acquittal, the appellant i.e. original complainant has filed the present appeal.

5. When this appeal came up for hearing on 16.9.2004, none appeared for the appellant during the entire week, hence, on 20.9.2004 this Court passed an order that the appellant to be informed that the appeal is fixed for final disposal on 11.10.2004. Accordingly, the appellant has been informed that this appeal is fixed for final disposal today. However, today again none appeared for the appellant. In such circumstances, in view of the decision of the Supreme Court in the case of **Rishi Nandan Pandit Vs. State of Bihar, reported in (1999) 8 SCC 644,** I have heard Shri. Shitole, the learned A.P.P. I have also perused the entire

record of this case including the judgment and order of the learned Magistrate, After hearing at length and after carefully perusing the record, this appeal is being disposed of on merits. After carefully going through the record and carefully considering the matter, I have reached the conclusion that this appeal deserves to be dismissed.

6. In the present case, three witnesses have been examined i.e. P.W.1 Vishwanath More, P.W.2 Mallikarjun Swami and P.W.3 Vilas Suryawanshi. P.W.2 Mallikarjun Swami is the injured witness in the present case. He is the most important witness. He has stated that on 29.11.90 he was proceeding from East to West on his scooter towards the square near Ashok Bunglow. He has stated that a car came there from North to South direction and it was in high speed and that car gave dash to the front wheel of his scooter due to which he fell down and sustained injury. However, in his cross examination, this witness has admitted that it was not mentioned in his statement as to who was driving the car in question. Nowhere in his evidence this witness has mentioned the Number of car or the make of the car. Thus, this witness who is the injured witness did not state in his statement as to who was driving the car, nor he has

given the details of the car viz. make or colour or even the car Number. In the present case, it may be stated that there is material contradiction in respect of the make of the car.

7. P.W.1 Vishwanath More is another important witness in the present case. He has stated that on the date of the incident one Ambassador car gave dash to the scooter. The car was in high speed and the scooter was in slow speed. However, this witness has stated that he could not identify the vehicle and thus he cannot state whether the vehicle is Ambassador car or the Fiat Car etc. This witness has not stated the Number of Car or any other details of the vehicle. It is most important is that nowhere this witness has stated that the accused was driving the vehicle rashly or negligently. Though this witness has stated that the vehicle was an Ambassador car, the panchanama in the present case and the other material on record shows that the car was of "Standard" make. In the entire information given to P.W.3 it is admitted by P.W.3 Vilas Suryawanshi that there is no mention about Standard car anywhere in the information and the information was given about accident of Ambassador Car. Thus, there is discrepancy in respect of make of the Car. Besides this, there is also discrepancy in relation to the

direction in which the car and the scooter were proceeding. Injured witness P.W.2 Shri. Swami has stated that he was going East to West, however, the evidence of the other witnesses is to the contrary. Thus, material contradictions in respect of directions in which the vehicle was proceeding has also been brought on record.

8. Though P.W.1 Shri. More and P.W.2 Shri. Swami has stated that the vehicle was in high speed, however, Shri. Swami has admitted that at the time of the accident there was heavy traffic. He has further unable to state whether there were speed breakers at the Northern and Southern side of the square. It is obvious that if there was heavy traffic the vehicle in question could not run in high speed. One other factor is that though the incident occurred on 29.11.1990 and though it has been brought on record that the panchanama has prepared on the date of the incident on the spot itself, the date of panchanama is 29th December, 1990. Besides this, the vehicles were also not send to R.T.O. for inspection. Thus, the learned Magistrate looking to all these aspects has acquitted the respondent No.2.

9. In my opinion, the view taken by the learned Magistrate is a possible and a reasonable view. If

the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court could have taken different view would be no ground to interfere. In this connection, there are no dearth of authorities but to eschew prolixity, I am only referring to few of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar, AIR 1987 SC 1083 Totasing Vs. State of Punjab and 1997(1) Mh.L.J. 770 State of Maharashtra Vs. Balram @ Nam Amarsingh Talwar.** It has been observed in para 12 of the decision in 1997 (1) Mh. L.J. 770 that:-

> 12. At the very outset, we would like to point out that we are seized of the matter in an appeal against acquittal. It is well settled that unless appreciation of evidence is clearly unreasonable or the impugned order of acquittal is vitiated by some illegality, this Court does not interfere in an appeal against acquittal. It is equally well settled that if the view of acquittal is a possible view then this Court does not interfere in spite of the fact that it may feel that had it been the trial Court, it may have taken a different view. We are fortified in our

view by the decisions of the Apex Court reported in **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and AIR 1987 SC 1083 Tota Singh Vs. State of Punjab.** We also feel that in this connection, it would be pertinent to refer to the decision of the Apex Court reported in **1995(2) SCC 486, State of Punjab Vs. Ajiab Singh,** where in para 7, Their Lordships of the Apex Court observed thus:-

> "We agree that this Court is not precluded or the court hearing the appeal against acquittal is not prevented from examining and reappreciating the evidence on record. But the duty of a court hearing the appeal against acquittal in the first instance is to satisfy itself if the view taken by acquitting court exercising appellate jurisdiction was possible view or not. And if the court comes to conclusion that it was not, it can on reappreciation of evidence reverse the order."

10. In my view, the view taken by the learned Magistrate is a reasonable and possible view in such circumstances, I do not find it necessary to set aside the order of acquittal passed by the learned Magistrate. Criminal appeal is dismissed.